

**Greenberg Traurig, LLP**  
 1200 17<sup>th</sup> Street, Suite 2400  
 Denver, Colorado 80202  
 (303) 572-6500  
 (702) 572-6540 (fax)

JAMES E. WHITMIRE, ESQ.  
 Nevada Bar No. 6533  
 BRIAN W. BOSCHKE, ESQ.  
 Nevada Bar No. 7612  
 F. THOMAS EDWARDS, ESQ.  
 Nevada Bar No. 9549  
 SANTORO, DRIGGS, WALCH,  
 KEARNEY, JOHNSON & THOMPSON  
 400 South Fourth Street, Third Floor  
 Las Vegas, Nevada 89101  
 Telephone: (702) 791-0308

BRIAN L. DUFFY, ESQ.  
 NAOMI G. BEER, ESQ.  
 GREENBERG TRAURIG, LLP  
 1200 Seventeenth Street, Suite 2400  
 Denver, Colorado 80202  
 Telephone: (303) 572-6500

WILLIAM J. KILBERG, P.C.  
 PAUL BLANKENSHIP  
 GIBSON, DUNN & CRUTCHER LLP  
 1050 Connecticut Avenue, N.W.  
 Washington, D.C. 20036  
 Telephone: (202) 955-8500

Attorneys for Wal-Mart Stores, Inc.

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEVADA**

<b>IN RE: WAL-MART WAGE AND HOUR                  EMPLOYMENT PRACTICES LITIGATION</b>	) MDL 1735 ) ) 2:06-cv-00225-PMP-PAL ) (BASE FILE) ) ) ) <b>DEFENDANTS' ANSWER AND</b> ) <b>AFFIRMATIVE DEFENSES TO</b> ) <b>AMENDED CLASS ACTION</b> ) <b>COMPLAINT</b>
<b>THIS DOCUMENT RELATES TO:</b>  <i>King v. Wal-Mart Stores, Inc., et al.</i> 2:07 -CV-01486-WY	

**ANSWER**

Defendant Wal-Mart Stores, Inc. ("Wal-Mart") hereby answers the numbered paragraphs of the Amended Class Action Complaint for Violations of the Employee Retirement Income Security Act of 1974 ("Complaint") as follows:

1. Paragraph 1 of the Complaint sets forth the nature of plaintiffs' action and not allegation of fact for which an answer is required, but to the extent that a response may be deemed to be necessary, Defendant denies the allegations of Paragraph 1, except to admit that Wal-Mart sponsors a defined contribution 401(k) pension plan, entitled the "Wal-Mart Profit Sharing and 401(k) Plan" ("Plan").

2. Paragraph 2 of the Complaint contains plaintiffs' characterization of their claims, not allegations of fact for which an answer is required, but to the extent that a response may be deemed to be necessary, Defendant denies the allegations of Paragraph 2.

3. Paragraph 3 of the Complaint contains plaintiffs' characterization of their claims including their request for damages, not allegations of fact for which an answer is required, but to the extent that a response may be deemed to be necessary, Defendant denies the allegations of Paragraph 3.

4. Defendant denies the allegations of Paragraph 4 of the Complaint, except to admit that Wal-Mart, in the sole discretion of its Board of Directors, contributes to the Plan each year a percentage of the "Compensation" of participating employees, as "Compensation" is defined by the Plan.

5. Defendant denies the allegations of Paragraph 5 of the Complaint.

6. Defendant denies the allegations of the first two sentences of Paragraph 6 of the Complaint. The remainder of Paragraph 6 sets forth the nature of plaintiffs' action and not allegations of fact for which an answer is required, but to the extent a response may be deemed to be necessary, Defendant denies the remaining allegations of Paragraph 6.

1           7. Paragraph 7 of the Complaint contains plaintiffs' characterization of their claims  
2 and requests for relief, not allegations of fact for which an answer is required, but to the extent  
3 that a response may be deemed to be necessary, Defendant denies the allegations of Paragraph 7.

4           8. Paragraph 8 of the Complaint contains plaintiffs' characterization of their claims  
5 and requests for relief, not allegations of fact for which an answer is required, but to the extent  
6 that a response may be deemed to be necessary, Defendant denies the allegations of Paragraph 8.

7           9. Paragraph 9 of the Complaint contains plaintiffs' characterization of their claims,  
8 not allegations of fact for which an answer is required, but to the extent that a response may be  
9 deemed to be necessary, Defendant denies the allegations of Paragraph 9.

10          10. The first sentence of Paragraph 10 of the Complaint contains conclusions of law  
11 and not allegations of fact for which an answer is required. The remainder of Paragraph 10  
12 describes the nature of plaintiffs' action, not allegations of fact for which an answer is required,  
13 but to the extent that a response may be deemed to be necessary, Defendant denies the  
14 allegations of the second sentence of Paragraph 10.

15          11. Paragraph 11 of the Complaint contains a description of the basis of plaintiffs'  
16 claim and a description of their intended litigation strategy, not allegations of a fact for which an  
17 answer is required, except that Defendant states that plaintiffs have been provided with a  
18 substantial amount of material related to the operation and administration of the Plan prior to the  
19 filing of the Complaint.

20          12. The first sentence of Paragraph 12 of the Complaint describes the nature of  
21 plaintiffs' action and not allegations of fact for which an answer is required. The second  
22 sentence of Paragraph 12 contains conclusions of law regarding subject matter jurisdiction and  
23 not allegations of fact for which an answer is required.

24          13. Paragraph 13 of the Complaint contains conclusions of law and not allegations of  
25 fact for which an answer is required, but to the extent that a response may be deemed to be  
26 necessary, Defendant denies the allegations of Paragraph 13, except to admit that Defendant is a  
27 resident of the United States.  
28

1           14. Paragraph 14 of the Complaint contains conclusions of law and not allegations of  
2 fact for which an answer is required, but to the extent that a response may be deemed to be  
3 necessary, Defendant denies the allegations of Paragraph 14-, except to admit that Wal-Mart or  
4 its subsidiaries operates stores in Pennsylvania.

5           15. Paragraph 15 of the Complaint contains conclusions of law and not allegations of  
6 fact for which an answer is required, but to the extent that a response may be deemed to be  
7 necessary, Defendant denies the allegations in Paragraph 15, except to admit that, pursuant to an  
8 Order dated December 21, 2007, the Judicial Panel on Multidistrict Litigation transferred this  
9 case to this district.

10          16. Defendant admits the allegations in the first four sentences of Paragraph 16,  
11 except that it lacks information and knowledge sufficient to form a belief as to whether plaintiff  
12 King is a resident of Pennsylvania, or whether plaintiff Rhone is a resident of New York. The  
13 final sentence of Paragraph 16 contains conclusions of law and not allegations of fact for which  
14 an answer is required.

15          17. Defendant denies the allegations of the first five sentences of Paragraph 17 of the  
16 Complaint, except to admit that Wal-Mart Stores, Inc. is a Delaware corporation with its  
17 headquarters in Bentonville, Arkansas; that Wal-Mart and its subsidiaries operates more than  
18 4,000 stores in the United States, including stores in Pennsylvania and New York, and almost  
19 3,000 stores internationally, that Wal-Mart has approximately 2.1 million employees, 1.42  
20 million of whom are employed in the United States; that its annual sales for fiscal year 2007  
21 totaled approximately \$375 billion; and that it conducts business in Pennsylvania and New York.  
22 The final sentence of Paragraph 17 contains conclusions of law and not allegations of fact for  
23 which an answer is required.

24          18. Defendant denies the allegations in Paragraph 18 of the Complaint, except to  
25 admit that the Plan document refers to the Committee as a "Named Fiduciary," and the Court is  
26 respectfully referred to the Plan document for a full and complete statement of its contents.

27          19. With respect to the first sentence of Paragraph 19 of the Complaint, Defendant  
28 lacks knowledge and information sufficient to form a belief as to whether Plaintiffs currently

1 know the identity of the Committee members who served during the Class Period. The second  
2 sentence of Paragraph 19 sets forth the definition of the terms "Defendants John/Jane Does 1-15"  
3 that plaintiffs use throughout the Complaint, not allegations of fact for which an answer is  
4 required. The last sentence of Paragraph 19 sets out plaintiffs' intention regarding adding  
5 members of the Committee as defendants, and not allegations of fact for which an answer is  
6 required.

7 20. Defendant admits the allegations of Paragraph 20 of the Complaint.

8 21. Paragraph 21 of the Complaint contains conclusions of law and not allegations of  
9 fact for which an answer is required.

10 22. The first sentence of Paragraph 22 of the Complaint contains conclusions of law  
11 and not allegations of fact for which an answer is required. Defendant denies the second  
12 sentence of Paragraph 22, except to admit that Wal-Mart is the sponsor of the Plan and  
13 established the Plan for the benefit of its eligible employees.

14 23. Defendant admits the allegations in Paragraph 23 of the Complaint.

15 24. Defendant denies the allegations of Paragraph 24 of the Complaint, except to  
16 admit that the Committee is vested with certain duties and responsibilities regarding the  
17 operation and administration of the Plan, that Committee members are appointed by Wal-Mart's  
18 Vice-President, Retirement Plans, and that Merrill Lynch Trust Company, FSB is the Trustee of  
19 the Plan.

20 25. Defendant denies the allegations in Paragraph 25 of the Complaint, except to  
21 admit that Plan participants may, in their sole discretion, make contributions to their individual  
22 Plan accounts, and that Wal-Mart, as plan sponsor, may, in its sole discretion, make  
23 contributions to the individual Plan accounts of eligible participants.

24 26. Defendant denies the allegations in Paragraph 26 of the Complaint, except to  
25 admit that, pursuant to the terms of the Plan, participants may contribute from 1 to 25% of their  
26 compensation, which is to be invested in the options offered by the Plan, and that to be eligible to  
27 receive a contribution from the Company, the employee must complete at least 1,000 hours of  
28

1 service during the Plan year in which the Company's contribution is made, and be employed on  
2 the last day of that year.

3 27. Defendant denies the allegations in Paragraph 27 of the Complaint, except to  
4 admit that Wal-Mart's contributions to the plan are discretionary and can vary from year to year,  
5 and that for Plan year 2006, Wal-Mart announced that it would contribute 2% of the eligible  
6 participant's compensation as its Profit Sharing contribution to the Plan. The Court is  
7 respectfully referred to the Plan document and the 2006 Summary Plan Description for a full and  
8 complete statement of their respective contents.

9 28. Defendant denies the allegations in Paragraph 28 of the Complaint, except to  
10 admit that a Plan participant's contribution to his accounts vests immediately, and that through  
11 January 30, 2008, the Company's Profit Sharing contribution vested at a rate of 20% per year  
12 starting with the participant's third year of service but that effective January 31, 2008, Wal-  
13 Mart's Profit Sharing contribution to a participants account began to vest starting with the  
14 participants second year of service.

15 29. Paragraph 29 of the Complaint contains conclusions of law and not allegations of  
16 fact for which an answer is required.

17 30. Paragraph 30 of the Complaint contains conclusions of law and not allegations of  
18 fact for which an answer is required.

19 31. Paragraph 31 of the Complaint contains conclusions of law and not allegations of  
20 fact for which an answer is required, and the Court is respectfully referred to the cited Plan  
21 document for a full and complete statement of its contents.

22 32. Paragraph 32 of the Complaint contains conclusions of law and not allegations of  
23 fact for which an answer is required, and the Court is respectfully referred to the cited Plan  
24 document for a full and complete statement of its contents.

25 33. Paragraph 33 of the Complaint contains conclusions of law and not allegations of  
26 fact for which an answer is required.

27 34. Paragraph 34 of the Complaint contains conclusions of law and not allegations of  
28 fact for which an answer is required.

1           35. Defendant denies the allegations in Paragraph 35 of the Complaint, except to  
2 admit that the Plan document refers to the Committee as the "Named Fiduciary" of the Plan, and  
3 the Court is respectfully referred to the Plan document for a full and complete statement of the  
4 duties and responsibilities of the Committee.

5           36. Paragraph 36 of the Complaint contains conclusions of law and not allegations of  
6 fact for which an answer is required.

7           37. The first and third sentences of Paragraph 37 of the Complaint contain  
8 conclusions of law and not allegations of fact for which an answer is required. The second  
9 sentence of Paragraph 37 describes plaintiffs' purported inability to identify the fiduciaries of the  
10 Plan absent full discovery, and not allegations of fact for which an answer is required.

11           38. Paragraph 38 of the Complaint contains conclusions of law and not allegations of  
12 fact for which an answer is required.

13           39. Defendant denies the allegations of Paragraph 39 of the Complaint.

14           40. Defendant denies the allegations of Paragraph 40 of the Complaint, except to  
15 admit that one of Wal-Mart's largest expenses is the compensation paid to its hourly employees.

16           41. Defendant denies the allegations of Paragraph 41 of the Complaint.

17           42. Defendant denies the allegations of Paragraph 42 of the Complaint, and  
18 specifically denies that members of the putative class were not properly paid for the work they  
19 performed.

20           43. Defendant denies the allegations of Paragraph 43 of the Complaint.

21           44. Defendant denies the allegations of Paragraph 44 of the Complaint.

22           45. Defendant denies the allegations of Paragraph 45 of the Complaint.

23           46. Defendant denies the allegations of Paragraph 46 of the Complaint.

24           47. Defendant denies the allegations of Paragraph 47 of the Complaint.

25           48. Defendant denies the allegations of Paragraph 48 of the Complaint.

26           49. Defendant denies the allegations of Paragraph 49 of the Complaint.

27           50. Defendant denies the allegations of the first sentence of Paragraph 50 of the  
28 Complaint and specifically denies that it engaged in "time shaving practices;" Defendant admits



1 that an article referring to Wal-Mart appeared in the New York Times on or about April 4, 2004,  
2 and the Court is respectfully referred to that article for a full and complete statement of its  
3 contents. Defendant denies the second sentence of Paragraph 50, except to admit that plaintiffs  
4 in various wage and hour cases brought against Wal-Mart have obtained discovery from Wal-  
5 Mart, including various electronic databases. Defendant denies the allegations of the third  
6 sentence of Paragraph 50 and specifically denies that Wal-Mart's electronic records "clearly" or  
7 otherwise demonstrate its wrongdoing, and except to state that Defendant lacks information and  
8 knowledge sufficient to form a belief as to the truth of the allegation that the information in Wal-  
9 Mart's databases "can only be deciphered and understood" by a "computer/statistical expert."  
10 Defendant denies the allegations of the fourth sentence of Paragraph 50, except to admit that  
11 various protective orders have been entered by the courts in the various wage and hour cases  
12 brought against Wal-Mart, and the Court is respectfully referred to those protective orders for a  
13 full and complete statement of their respective contents. With respect to the fifth sentence of  
14 Paragraph 50, Defendant admits that Wal-Mart denies that it "perpetrates time shaving and  
15 similar illegalities."

16 51. Defendant denies the allegations of first sentence of Paragraph 51 of the  
17 Complaint. Defendant lacks information and knowledge sufficient to form a belief as to the truth  
18 of the allegations in the second sentence of Paragraph 51.

19 52. Defendant denies the allegations of Paragraph 52 of the Complaint. except to  
20 admit that an article referring to Wal-Mart appeared in the New York Times on or about April 4,  
21 2004, and the Court is respectfully referred to the cited article for a full and complete statement  
22 of its contents.

23 53. Defendant lacks information and knowledge sufficient to form a belief as to the  
24 truth of the allegations of Paragraph 53 of the Complaint, except to deny that Wal-Mart engaged  
25 in "unlawful time shaving practices," and except to admit that an April 2004 article in the New  
26 York Times mentions Wal-Mart, and the Court is respectfully referred to the cited New York  
27 Times article for a full and complete statement of its contents.  
28



1           54. Defendant denies the allegations of Paragraph 54 of the Complaint, except to  
2 admit that Wal-Mart has produced videotapes in discovery in other litigation in which a  
3 protective order has been entered. The Court is respectfully referred to the specifically  
4 mentioned videotape for a full and complete statement of its contents.

5           55. Defendant denies the allegations of Paragraph 55 of the Complaint, except to  
6 admit that Wal-Mart has produced videotapes in discovery in other litigation in which a  
7 protective order has been entered. The Court is respectfully referred to the specifically  
8 mentioned videotape for a full and complete statement of its contents.

9           56. Defendant denies the allegations of Paragraph 56 of the Complaint, except to  
10 admit that Wal-Mart has produced an April 2003 training memorandum during the course of  
11 discovery in certain wage and hour litigation, and the Court is respectfully referred to the cited  
12 memorandum for a full and complete statement of its contents.

13           57. Defendant lacks information and knowledge sufficient to form a belief as to the  
14 truth of the allegations of Paragraph 57 of the Complaint, except to deny that Wal-Mart had a  
15 company-wide practice of "time shaving," or regularly deleting pay from hourly employees in  
16 any of the manners alleged in Paragraph 57.

17           58. Defendant denies the allegations of Paragraph 58 of the Complaint, and  
18 specifically denies that it engaged in wrongful time shaving practices.

19           59. Defendant denies the allegations of Paragraph 59 of the Complaint and  
20 specifically denies that it engaged in improper and illegal time shaving or other unlawful wage  
21 and hour practices, except that it lacks information and knowledge sufficient to form a belief as  
22 to what the exercise of the due diligence by the plaintiffs and Plan participants would have  
23 revealed.

24           60. Defendant denies the allegations of Paragraph 60 of the Complaint.

25           61. Defendant denies the allegations in the first sentence of Paragraph 61 of the  
26 Complaint, as Wal-Mart did not engage in "time-shaving" and/or "one-minute clock out  
27 practices" and thus did not disclose any such practices in its handbook, corporate policies, or  
28 standard orientation materials provided to its hourly employees. Defendant denies the remaining

1 allegations in Paragraph 61, and the Court is respectfully referred to the statements of M. Lee  
2 Scott, President and Chief Executive Officer of Wal-Mart, quoted in Paragraph 61(a); to the  
3 statement of Mr. Scott quoted in Paragraph 61(b); and to the statement of Mr. Scott quoted in  
4 Paragraph 61(c); for a full and complete statement of their respective contents.

5         62. Defendant denies the allegations of Paragraph 62 of the Complaint, except to  
6 admit that Wal-Mart is a defendant in wage and hour litigation in a variety of jurisdictions,  
7 including Pennsylvania and California, that court orders and jury verdicts have been entered in  
8 some of those cases, and that in March 2005 in March 2005 Wal-Mart agreed to settle a matter  
9 related alleged violations of federal immigration laws in connection with the use of third-party  
10 floor cleaning contractors, and except to further admit that Wal-Mart agreed to settle a dispute  
11 with the United States Department of Labor concerning alleged errors in the computation of the  
12 regular rate of pay that resulted in underpayment of overtime. The Court is respectfully referred  
13 to the verdicts, orders and settlement in those matters for a full and complete statement of their  
14 respective contents.

15         63. Defendant denies the allegations of Paragraph 63 of the Complaint, except to  
16 admit that various wage and hours cases are in various stages of litigation the Court is  
17 respectfully referred to cited Wal-Mart's 2006 Annual Report for a full and complete statement  
18 of its contents regarding the wage and hour lawsuits brought against Wal-Mart.

19         64. Defendant denies the allegations of Paragraph 64 of the Complaint.

20         65. Defendant denies the allegations of Paragraph 65 of the Complaint, except to  
21 admit that Wal-Mart has from time to time during the putative Class Period communicated with  
22 Plan participants about Company contributions to the Plan.

23         66. Defendant denies the allegations of the first sentence of Paragraph 66 of the  
24 Complaint. The second sentence contains conclusion of law and not allegations of fact for which  
25 an answer is required.

26         67. Defendant denies the allegations of Paragraph 67 of the Complaint.  
27  
28

1           68. Paragraph 68 of the Complaint contains plaintiffs' characterization of their  
2 claims, not allegations of fact for which an answer is required, but to the extent that a response  
3 may be deemed to be necessary, Defendant denies the allegations of Paragraph 68.

4           69. Defendant denies the allegations of Paragraph 69 of the Complaint.

5           70. Defendant denies the allegations of Paragraph 70 of the Complaint, and the Court  
6 is respectfully referred to the cited December 27, 2007 order of the Court in *Braun v. Wal-Mart*  
7 *Stores, Inc.*, March Term 2002, No. 3127 (Phila. Common Pleas) for a full and complete  
8 statement of its contents, and to the other proceedings in that case regarding plaintiff King's  
9 status as a member of the class certified in the case.

10          71. Defendant lacks knowledge and information sufficient to form a belief as to the  
11 truth of the allegations of Paragraph 71 of the Complaint, except to state that Wal-Mart paid  
12 plaintiff King for all recorded work he performed.

13          72. Defendant lacks knowledge and information sufficient to form a belief as to the  
14 truth of the allegations of Paragraph 72 of the Complaint, except to state that Wal-Mart paid  
15 plaintiff Rhone for all recorded work he performed.

16          73. The first sentence of Paragraph 73 of the Complaint, sets forth plaintiffs'  
17 characterization of their claims and not allegations of fact for which an answer is required. The  
18 remainder of Paragraph 73 contains conclusions of law and not allegations of fact for which an  
19 answer is required.

20          74. Paragraph 74 of the Complaint sets forth plaintiffs' characterization of their  
21 claims including the relief they seek, and not allegations of fact for which an answer is required.

22          75. Paragraph 75 contains conclusions of law and not allegations of fact for which an  
23 answer is required.

24          76. Paragraph 76 contains conclusions of law and not allegations of fact for which an  
25 answer is required.

26          77. Paragraph 77 of the Complaint contains conclusions of law and not allegations of  
27 fact for which an answer is required.

1           78. Paragraph 78 of the Complaint contains conclusions of law and not allegations of  
2 fact for which an answer is required.

3           79. Paragraph 79 of the Complaint contains conclusions of law and not allegations of  
4 fact for which an answer is required.

5           80. Paragraph 80 of the Complaint contains conclusions of law and not allegations of  
6 fact for which an answer is required.

7           81. Paragraph 81 of the Complaint contains conclusions of law and not allegations of  
8 fact for which an answer is required.

9           82. Paragraph 82 of the Complaint contains conclusions of law and not allegations of  
10 fact for which an answer is required.

11           83. Paragraph 83 of the Complaint contains conclusions of law and not allegations of  
12 fact for which an answer is required.

13           84. Paragraph 84 of the Complaint sets forth plaintiffs' characterization of their action  
14 and describes the class they seek to represent, and not allegations of fact for which an answer is  
15 required.

16           85. Defendant denies the allegations of the first sentence of Paragraph 85, except that  
17 Defendant admits that Plaintiffs seek to bring this action as a class action under Federal Rule of  
18 Civil Procedure 23. Defendant answers the various subparagraphs of Paragraph 85 as follows:

19               (a) Defendant denies the allegations of subparagraph 85 (a), except to admit  
20 that the Plan had as many as tens of thousands of participants during the Class Period.

21               (b) Subparagraph 85(b) contains conclusions of law and not allegations of fact  
22 from which an answer is required.

23               (c) Defendant denies the allegations of subparagraph 85(c).

24               (d) Defendant lacks information and knowledge sufficient to form a belief as  
25 the truth of the allegations of subparagraph 85(d).

26               (e) Defendant denies the allegations of subparagraph 85(e).

27           86. Defendant denies the first and second sentences of Paragraph 86 of the  
28 Complaint. The third sentence Paragraph 86 contains conclusions of law and not allegations of

1 fact for which an answer is required. Defendant lacks information and knowledge sufficient to  
2 form a belief as to the truth of the allegations in the last sentence of Paragraph 86.

3 87. Defendant denies the allegations of Paragraph 87 of the Complaint.

4 88. Paragraph 88 of the Complaint contains conclusion of law and not allegations of  
5 fact for which an answer is required.

6 89. Defendant incorporates by reference its responses to Paragraphs 1 through 88, as  
7 though fully set out herein.

8 90. Paragraph 90 contains conclusions of law and not allegation of fact for which an  
9 answer is required.

10 91. Defendant denies the allegations of Paragraph 91 of the Complaint.

11 92. Defendant denies the allegations of Paragraph 92 of the Complaint.

12 93. Defendant denies the allegations of Paragraph 93 of the Complaint.

13 94. Defendant denies the allegations of Paragraph 94 of the Complaint, and notes that  
14 the Court has previously dismissed plaintiffs' claim under 29 U.S.C. §1132(a)(2) for monetary  
15 losses allegedly suffered by the Plan for failure to allege individual injury sufficient to satisfy the  
16 standing requirements of Article III, and that the allegations in the amended complaint have not  
17 cured that standing defect. Defendant is filing contemporaneously a motion to dismiss plaintiffs'  
18 ERISA Section 502(a)(2) claims for lack of standing.

19 95. Defendant incorporates by reference its responses to Paragraphs 1 through 94, as  
20 though fully set out herein.

21 96. Paragraph 96 contains conclusions of law and not allegations of fact for which an  
22 answer is required

23 97. Defendant denies the allegations of Paragraph 97 of the Complaint, and the Court  
24 is respectfully referred to the Plan document for a full and complete statement of the duties of the  
25 respective defendants.

26 98. Paragraph 98 contains conclusions of law and not allegation of fact for which an  
27 answer is required.

28 99. Defendant denies the allegations of Paragraph 99 of the Complaint.

100. Defendant denies the allegations of Paragraph 100 of the Complaint.

101. Defendant denies the allegations of Paragraph 101 of the Complaint.

102. Defendant denies the allegations of Paragraph 102 of the Complaint, and notes that the Court has previously dismissed plaintiffs' claim under 29 U.S.C. § 1132(a)(2) for monetary losses alleged suffered by the Plan, for failure to allege individual injury sufficient to satisfy the standing requirements of Article III, and that the amended complaint has not cured that standing defect. Defendant is filing contemporaneously a motion to dismiss plaintiffs' ERISA Section 502(a)(2) claims for lack of standing.

103. Defendant incorporates by reference their responses to Paragraphs 1 through 102, as though fully set out herein.

104. Paragraph 104 contains conclusions of law and not allegations of fact for which an answer is required.

105. Paragraph 105 of the Complaint contains plaintiffs' characterization of their claims, not allegations of fact for which an answer is required, but to the extent that a response may be deemed to be necessary, Defendant denies the allegations of Paragraph 105.

Defendant expressly denies any allegations not hereinbefore specifically admitted or denied.

#### FIRST DEFENSE

Plaintiffs' complaint fails to state a claim upon which relief may be granted.

#### SECOND DEFENSE

The claims of potential class members may be barred in whole or in part by the doctrines of waiver, consent, estoppel, accord and satisfaction, acquiescence, setoff, payment, and/or release.

#### THIRD DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

#### FOURTH DEFENSE

Plaintiffs' claims are barred to the extent they seek duplicative relief or amounts seeking more than a single recovery.

**FIFTH DEFENSE**

Plaintiffs lack standing under Article III of the United States Constitution to seek the relief requested, and the matter is not otherwise ripe for adjudication.

**SIXTH DEFENSE**

Plaintiffs have failed to satisfy the prerequisites to a class action set forth in Rule 23 of the Federal Rules of Civil Procedure.

**SEVENTH DEFENSE**

Plaintiffs fail to identify an ascertainable class.

**EIGHTH DEFENSE**

Plaintiffs are not entitled to equitable relief because Plaintiff has adequate remedies at law.

**NINTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the failure to mitigate damages, if any.

**TENTH DEFENSE**

Plaintiffs' claims are barred by failure to exhaust remedies available under the Plan.

**ELEVENTH DEFENSE**

Plaintiffs' claims are barred because any alleged damages were caused, in whole or in part, by Plaintiffs' own negligence, failure to perform adequate due diligence, or other intervening or superseding causes over which Defendant had no control and cannot form the basis for any liability of Defendant.

**TWELFTH DEFENSE**

Plaintiffs' claims are barred because Defendant did not participate in, authorize, ratify, or benefit from the alleged wrongful acts set forth in the Complaint.

**THIRTEENTH DEFENSE**

Plaintiffs knowingly submitted to any alleged wage violations.

**FOURTEENTH DEFENSE**

Plaintiffs' proposed class action would violate Defendant's due process rights.



**FIFTEENTH DEFENSE**

Plaintiffs' claims are barred by the failure to demand payment.

**SIXTEENTH DEFENSE**

Defendant has acted in good faith and/or in reliance on information furnished by others at all times relevant to this action.

**SEVENTEENTH DEFENSE**

Plaintiffs' claims are barred by any other matter constituting an avoidance or affirmative defense.

**EIGHTEENTH DEFENSE**

Defendant hereby incorporates, as applicable, the Affirmative and Additional Defenses of the defendant Committee not expressly set out above.

**NINETEENTH DEFENSE**

Defendants designate all denials set forth above as defenses if necessary for their full defense of this matter and reserve the right to assert additional affirmative defenses as discovery continues.

WHEREFORE, Defendant prays that the Court:

- (a) Dismiss the case with prejudice and enter judgment in their favor;
- (b) Award Defendant their costs, including reasonable attorney's fees; and
- (c) Order such relief as the Court finds just and proper.

Dated this 14<sup>th</sup> day of November, 2008

GREENBERG TRAURIG, LLP

/s/ Naomi G. Beer

BRIAN L. DUFFY

NAOMI G. BEER

1200 17<sup>th</sup> Street, Suite 2400

Denver, Colorado 80202

*Attorneys for Defendant Wal-Mart Stores, Inc.*

**CERTIFICATE OF SERVICE**

I, Molly E. Roll, declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; I am over the age of 18 years; I am employed by GREENBERG TRAURIG LLP, located at 1200 Seventeenth Street, Suite 2400, Denver, Colorado 80202, whose members are members of the State Bar of Colorado and at least one of whose members is a member of the Bar of each Federal District Court within Colorado; I am not a party to the within action; and that I caused to be served a true and correct copy of the following document in the manner indicated below:

1. **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES  
TO AMENDED CLASS ACTION COMPLAINT**

2. **CERTIFICATE OF SERVICE**

X

By Electronic Filing: I served a true copy on this date of each document listed above on all parties registered for electronic filing in this action.

Executed on November 14, 2008 at Denver, Colorado.

/s/ Molly E. Roll

Molly E. Roll  
Legal Assistant